

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**GREGORY L. GOULD, JR.,** )  
                                  )  
                                  )  
**Plaintiff,**                )  
                                  )  
                                  )  
**v.**                         )  
                                  )  
                                  )  
**SECRETARY JEFFREY BEARD, et al.,** )  
                                  )  
                                  )  
**Defendants.**              )

**Civil Action No. 07-55 Erie**

**MEMORANDUM ORDER**

This civil rights action was received by the Clerk of Court on March 27, 2007, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation, filed on February 18, 2009 [Document # 60], recommended that the **partial** motion to dismiss filed by Defendants [Document # 47] be granted, in that the retaliation and access to courts claims be dismissed. More specifically, it was recommended that the retaliation claim be dismissed as it was barred by the statute of limitations and the access to courts claim be dismissed for failure to state a claim upon which relief may be granted.

The parties were allowed ten (10) days from the date of service to file objections to the Report and Recommendation. Service was made on Plaintiff by certified mail and on Defendants.

On March 9, 2009, Plaintiff filed Objections to the Report and Recommendation. Document # 62. Liberally construing Plaintiff's arguments, this Court believes Plaintiff is contending that he did not discover the source of his retaliation claim until March of 2005 and that he continues to suffer the effects of the retaliation in that his security classification cannot be lowered and he cannot be incarcerated closer to his family.

After de novo review of the case, together with the Report and Recommendation and the objections thereto, this Court will adopt the Report and Recommendation.

However, in consideration of Federal Rule of Civil Procedure 15(a)'s liberal approach to amending pleadings, we shall dismiss without prejudice the retaliation claim. Plaintiff will be allowed to replead his that claim only. In accordance with Federal Rule of Civil Procedure 8, the amended complaint must set forth a claim for relief which contains a short and plain statement of the claim. Further, the amended complaint must identify who retaliated against Plaintiff and when the retaliatory action occurred.

AND NOW, this 10<sup>th</sup> day of March, 2009;

IT IS HEREBY ORDERED that the partial motion to dismiss the amended complaint as pled [Document # 60] is granted. Further, the Clerk of Courts should not dismiss Defendants Beard, Wilson, Sobina and Klemm in light of the fact that Plaintiff will be allowed to file an amended complaint.

The Report and Recommendation of Magistrate Judge Baxter, dated February 18, 2009, is adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff may file an amended complaint to replead only his retaliation claim before March 23, 2009. Plaintiff's failure to comply in this regard may result in the dismissal of this action for failure to prosecute.

s/ Sean J. McLaughlin  
United States District Judge